

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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FRANK MANUEL HERNANDEZ,

Plaintiff,

v.

PERRY RUSSELL, *et al.*,

Defendants.

Case No. 3:20-cv-00114-MMD-CSD

ORDER

This action began with a 42 U.S.C. § 1983 civil rights complaint filed by *pro se* Plaintiff Frank Manuel Hernandez, who is incarcerated at Northern Nevada Correctional Center. (ECF No. 8.) Before the Court is Hernandez's objection (ECF No. 92 ("Objection")) to United States Magistrate Judge Craig S. Denney's order denying his motion for service by U.S. Marshal. (ECF Nos. 90, 91.) For the reasons stated below, the Court overrules Hernandez's Objection.

Magistrate judges are authorized to resolve pretrial matters subject to district court review under a "clearly erroneous or contrary to law" standard. 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a) (a "district judge . . . must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law"); *see also* LR IB 3-1(a) ("A district judge may reconsider any pretrial matter referred to a magistrate judge in a civil or criminal case under LB IB 1-3, when it has been shown the magistrate judge's order is clearly erroneous or contrary to law."). A magistrate judge's order is "clearly erroneous" if the court has a "definite and firm conviction that a mistake has been committed." *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948). "An order is contrary to law when it fails to apply or misapplies relevant statutes, case law, or rules of procedure." *Jadwin v. Cnty. of Kern*, 767 F. Supp. 2d 1069, 1110-11 (E.D. Cal. 2011)

1 (citation omitted). When reviewing the order, however, the magistrate judge “is afforded
2 broad discretion, which will be overruled only if abused.” *Columbia Pictures, Inc. v.*
3 *Bunnell*, 245 F.R.D. 443, 446 (C.D. Cal. 2007). The district judge “may not simply
4 substitute its judgment” for that of the magistrate judge. *Grimes v. City & Cnty. of S.F.*,
5 951 F.2d 236, 241 (9th Cir. 1991) (citation omitted).

6 In his motion for service, Hernandez requests that the U.S. Marshal serve
7 Defendant Steve Lennon at a Texas address he found on Jobfinder.com and asks for
8 another extension. (ECF No. 90 at 1-3.) Judge Denney denied the motion because
9 Hernandez failed to provide any additional information that Lennon actually resides at the
10 Texas address, and the Court has already granted Hernandez multiple extensions to
11 serve Lennon. (ECF No. 91 at 5-6.) Hernandez objects to Judge Denney’s order, arguing
12 that it has always been known by all parties, since the beginning of the case, that Lennon
13 resides in Texas. (ECF No. 92 at 1.)

14 The Court finds that Lennon’s current address is uncertain, and Judge Denney did
15 not clearly err. See 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). Hernandez did not
16 provide any further information or support, other than an alleged search result from
17 Jobfinder.com, that Lennon resides at the specific Texas address. (ECF Nos. 90, 92.) In
18 fact, he previously submitted two different addresses for Lennon in Texas in two different
19 cities, as well as a former address in Carson City, Nevada. (ECF Nos. 80, 91 at 4.) The
20 Attorney General’s Office and Defendant Craig also could not verify Lennon’s current
21 address. (ECF No. 91 at 2, 5.) Hence, another service attempt by the U.S. Marshal, given
22 the prior failed attempts, would be a waste of finite judicial resources. (ECF Nos. 22, 89,
23 91 at 2, 5.) Finally, over a year has passed since the original service deadline, and Judge
24 Denney has already granted Hernandez numerous extensions and accommodations to
25 try to locate and serve Lennon. (ECF No. 91 at 2-6.) Any further delay is unwarranted.
26 See Fed. R. Civ. P. 1 (directing the Court to construe and administer the procedural rules
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1 “to secure the just, speedy, and inexpensive determination of every action and
2 proceeding”). Thus, Judge Denney did not clearly err in denying Hernandez’s motion.¹

3 It is therefore ordered that Hernandez’s objection (ECF No. 92) to Judge Denney’s
4 order (ECF No. 91) denying his motion for service (ECF No. 90) is overruled.

5 It is further ordered that October 24, 2022, remains the deadline for Hernandez to
6 file proof of service for Defendant Steve Lennon.

7 DATED THIS 19th Day of October 2022.

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10 MIRANDA M. DU
11 CHIEF UNITED STATES DISTRICT JUDGE
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25 ¹In his motion and Objection, Hernandez also requests a court order that the law
26 clerk at his former facility be allowed to continue to help him with his case. (ECF Nos. 90
27 at 3, 92 at 2.) The Court denies this request because Hernandez failed to provide any
28 reasons as to why the library assistants at his current facility are insufficient. (*Id.*) See AR
722.02(6)(A) (“Inmate library assistants may only assist inmates at the institution where
they are assigned, except by specific order from a judge or magistrate”). And the Court
has no authority to direct the facility’s law clerk to assist Hernandez.